

## REMARKS

In the Office Action, the Examiner rejected Claims 1, 3, 5-8, 11-13 and 15-19 under 35 U.S.C. 103 as being unpatentable over the prior art. The Examiner objected to Claims 10 and 20 as being dependent from rejected base claims, and the Examiner indicated that Claims 10 and 20 would be allowable if appropriately rewritten.

With regard to the rejection of the claims over the prior art, Claims 1, 3, 5, 11-13 and 15-17 were rejected as being unpatentable over U.S. Patent 5,880,983 (Elliott, et al.) in view of U.S. patent application publication no. 2004/0122886 (Gerwig, et al.), and Claims 6-8, 18 and 19 were rejected as being unpatentable over Elliott, et al. in view of Gerwig, et al. and further in view of U.S. Patent 7,228,325 (Willson, Jr., et al.).

The rejection of the claims under 35 U.S.C. 103 and the objection to Claims 10 and 20 are respectfully traversed for the reasons discussed below. Amendments are being made to independent Claims 1 and 13 to improve the readability of these claims, and Claim 10 is being rewritten in independent form including limitation of Claims 1, 6 and 8 and of original Claim 9. Also, new Claim 21, which is dependent from Claim 1, is being added to describe a feature of an embodiment of the invention.

The rejection of Claims 1, 3, 5, 11-13 and 15-17 under 35 U.S.C. 102 and the objection to Claims 10 and 20 are respectfully traversed because Gerwig, et al, which is relied on for the rejection of each of claims 1, 3, 5, 11-13 and 15-17, cannot be applied, under 35 U.S.C. 103, to reject the claims of the present application. This is because Gerwig, et al. and this application are assigned to the same corporation, IBM Corporation. Applicants submit that the filing of the present application on April 8, 2004, brings the subject application under the rubric of the amendments made to the Patent Law in the American Inventors Protection Act of 1999. That Act, enacted November 29,

1999, amends 35 U.S.C. §103(c) such that subject matter developed by another person which qualifies as prior art under 35 U.S.C. §102(e) does not preclude patentability where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an application of assignment to the same person.

That this section applies to the instant application is established by the Guidelines concerning the implementation of changes to 35 U.S.C. §§102(g) and 103(c) published in the Official Gazette on April 11, 2000. Those Guidelines includes the statement that the amendment to 103(c) applies to all utility, design and plant patent applications filed on or after November 29, 1999, including continuing applications filed under 37 C.F.R. §1.53(d), continued prosecution applications filed under 37 C.F.R. §1.53(b) and reissues. In view of the filing of the present application on April 8, 2004, Applicants benefit from the statutory restraints imposed in the amendment to §103(c).

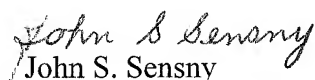
That the claims of the present application are patentable over the rejection of record is established by the fact that Gerwig, et al. is, on its face, assigned to International Business Machines Corporation. The instant application is also assigned to International Business Machines. The Assignment of the instant application to International Business Machines was recorded by the USPTO on December 9, 2004 at Reel 015439, Frame 0371. A copy of a record of this recordation of the Assignment is submitted herewith.

U.S. Patent application publication no. 2004/0122886 in the name of Gerwig, et al. was published on June 24, 2004. The present application is entitled to the benefit of the filing date of April 8, 2004. As such, the outstanding rejection of Claims 1, 3, 5-8, 11-13 and 15-19 and the objection to Claims 10 and 20 of the present application applies the Gerwig, et al. patent application publication predicated upon its availability as a reference under 35 U.S.C. §102(e) in that this is the only subsection of 35 U.S.C. §102 whose requirements are met by this patent application publication.

In view of the requirements of 35 U.S.C. §103(c), as amended November 29, 1999, which apply to the instant application, the Gerwig, et al. reference cannot preclude patentability under 35 U.S.C. §103, the section upon which the above-listed claims of the present application have been either rejected or objected to. Thus, these claims of the present application are patentable over the outstanding rejection and objection of record. Reconsideration and removal of this ground of rejection is therefore deemed appropriate. Such action is respectfully urged.

For the reasons discussed above, the Examiner is respectfully requested to reconsider and to withdraw the rejections of Claims 1, 3, 5-8, 11-13 and 15-19 under 35 U.S.C. 103 and the objections to Claims 10 and 20, and to allow Claims 1, 3, 5-8, 10-13 and 15-20 and new Claim 21, which is dependent from Claim 1. If the Examiner believes that a telephone conference with Applicants' Attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,

  
John S. Sensny  
Registration No.: 28,757  
Attorney for Applicants

Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343

JSS:jy

Attachments: Copy of Patent Assignment Abstract of Title